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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/092,696	06/05/1998	SHIRLEY ANN BARCELON	5468-07-LAV	6388

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EXAMINER

WONG, LESLIE A

ART UNIT	PAPER NUMBER
1761	<i>22</i>

DATE MAILED: 11/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/092,696	Applicant(s) Barcelon et al.
	Examiner Leslie Wong	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Oct 28, 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 9, 11, 13, 14, 16, and 18 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 9, 11, 13, 14, 16, and 18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 28, 2002 has been entered.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9, 11, 13, 14, 16, and 18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant does not teach what is encompassed by "consisting essentially of" with respect to the claimed invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Record et al (US Patent No. 5,372,824) for the reasons set forth in rejecting the claims in the last Office actions (Paper Nos. 14 and 17). The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

Record et al disclose the combination of flavor and N-ethyl-p-menthane-3-carboxamide in the amounts claimed for use in chewing gums (see entire patent).

The claims differ as to enhancement and the specific flavors.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made to use any flavor in that of Record et al because the choice of flavor is seen to be no more than a matter of choice and well-within the skill of the art. Applicant attaches no criticality to the flavor and discloses fruit, herbal, and spice flavors and specifically states that “(o)ther flavors known to those skilled in the art may also be enhance” (see page 4, second full paragraph).

Enhancement would be obvious to that of Record et al as the same components are used.

Claims 9, 11, 13, 14, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (US Patent No. 5,009,893) for the reasons previously set forth in rejecting the claims (Paper Nos. 14 and 17). The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

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Cherukuri et al disclose the combination of a flavor (e.g. mint and cherry) and N-ethyl-p-menthane-3-carboxamide in the amounts claimed for use in chewing gums and confections (see entire patent).

The claims differ as to enhancement and the specific flavors.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made to use any flavor in that of Cherukuri et al because the choice of flavor is seen to be no more than a matter of choice and well-within the skill of the art. Applicant attaches no criticality to the flavor and discloses fruit, herbal, and spice flavors and specifically states that "(o)ther flavors known to those skilled in the art may also be enhance" (see page 4, second full paragraph).

Enhancement would be obvious to that of Cherukuri et al as the same components are used.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see *In re Kerkhoven* 205 USPQ 1069 and *In re Gershon* 152 USPQ 602.

All of the claim limitations and arguments have been considered. None of them are seen as serving as basis for patentability.

No claim is allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is (703) 308-1979. The examiner can normally be reached on Tuesday-Friday.

The fax number for this Group is (703) 872-9310 for non-final responses and (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Leslie Wong
Primary Examiner
Art Unit 1761

LAW
November 14, 2002